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Supreme Court, U.S.
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IN THE
Supreme Court of the United States

AURA LaBRÓ KARAGIANNOPOULOS,
Po Se Petitioner

v.

CITY OF LOWELL,
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PRO SE PETITIONER'S BRIEF

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QUESTIONS PRESENTED FOR REVIEW

1. Which Federal Rule authorized Mr. Frank G. Johns, Clerk, to have *manually* removed Plaintiff's Judge Robert J. Conrad, Jr.'s defaulted case and personally reassign it to Judge Frank D. Whitney?

2. The 4th Circuit *adamantly* refused to address the pivotal issue of whether Judge Frank D. Whitney had jurisdiction over Plaintiff's case. Did he?

3. On 11/07/2006, ten months after the City of Lowell had been in default, Judge Whitney, on his own volition, *moved the Court* (moved himself) and:

- He accepted Defendant's late Answer dated 11/11/2005 with the altered and falsified postage meter label.
- He denied Plaintiff's Motion for Judgment by Default which had been filed in Judge Conrad's court 11/21/2005.
- He changed it to an *entry of default.*
- He annulled Magistrate Keesler Dispositive Order dated 01/04/2006.
- He *moved* Judge Conrad's defaulted case to trial.

Plaintiff's Judge Conrad did not do any of the above. Judge Whitney's Order was retroactive to 11/11/2005 when the case was still physically lodged in Judge Conrad's court. Which Federal Rule authorized Judge Whitney to retroactively annul Magistrate Keesler Dispositive Order and overrule Judge Conrad?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The caption contains the names of all the parties to the proceeding below.

Pursuant to this Court's Rule 29.6, Aura LaBró Karagiannopoulos, Pro Se Petitioner has no parent corporation and no publicly held company that owns 10% or more of the corporation's stock.

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OPINIONS BELOW

The ORDER of the United States Court of Appeal for the Fourth Circuit dismissing appeal was unpublished, Appendix 42a.

JURISIDCTION

The judgment of the Court of Appeal was entered December 12, 2008. On 12/19/2008, Plaintiff filed Petition for Rehearing. The Court of Appeal denied rehearing and rehearing en banc on January 23, 2009, Appendix 45a. The Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTE

A. Fourteenth Amendment Equal Protection Clause "is simply one aspect principle that only if there is purposeful discrimination can there be a violation of the Equal Protection Clause." "...provides a more explicit safeguard of prohibited unfairness...than the due process clause of the Fifth Amendment."

B. 42 USCS § 1985 (3) Conspiracy to interfere with civil rights.

The 4th Circuit *Adamantly* Refused to Address the Pivotal Issue of whether Judge Frank D. Whitney had Jurisdiction over Plaintiff's Case.

On 12/19/2008, Plaintiff filed Petition for Rehearing and made a valid request:

> In the 4th Circuit Court of Appeal's ruling dated 12/12/2008, the Court failed to either affirm or deny the crucial issue of whether Judge Whitney had jurisdiction over Plaintiff's case. Respectfully, at this time, Plaintiff-Appellant herewith petitions the 4th Circuit Court of Appeal to address this pivotal issue, and Plaintiff-Appellant asks for a legal opinion with the corresponding legal citations in the form of an *addendum* to its original ruling. If the Court can show Plaintiff-Appellant, that indeed Judge Whitney was Plaintiff's official judge; then, his ruling must stand as a matter of law. However, if the Court cannot show Plaintiff...that Judge Whitney ever had jurisdiction over Plaintiff's case; then, this Court must nullify his ruling on the Defendant's Motion for Summary Judgment as a matter of law...

January 23, 2009 "The Court denies the petition for rehearing, Appendix 45a. The 4th Circuit erred in ignoring the clear evidence that Judge Whitney had lacked the jurisdiction to have granted a final judgment in Plaintiff's Judge Conrad defaulted case.

STATEMENT OF CASE

1. Hispanic pro Se Plaintiff was born in Managua, Nicaragua and is a Naturalized USA Citizen. On 09/19/2005, she filed a Civil Rights Violation Complaint against the City of Lowell. The case was assigned to Judge Robert J. Conrad, Jr., and Magistrate David C. Keesler. Judge Conrad has *never* recused himself from Plaintiff's case.

2. On 10/05/2005, (Doc. No. 4) Defendant filed Motion for Extension of Time to File Answer. The Magistrate granted a 30 day extension (Doc. No. 5), and Answer was due **November 9, 2005.**

3. It was November 11, 2005, and Mrs. Thompson, Lead Attorney for Defendant, still had not served Plaintiff with its Answer. Thereby, she simply altered and falsified the label on her commercial postage meter from the "11th" to read the "9th." Inside the envelope, Mrs. Thompson further falsified the date on the Certificate of Service attesting that she had served Plaintiff on the 9th day of November when it was actually the 11th day of November 2005. She violated 18 U.S.C. §931 Art. 131 (2) Perjury " in any... certificate...subscribes any false statement material to the issue of matter of inquiry."

4. On 11/11/2005, she altered and falsified the envelope and also mailed it to the wrong address at: **901 West First Street Lowell**, NC. 28098. Plaintiff's address is: **901 N. Main St.**, Lowell, NC. 28098.

5. Mr. Matheny, a Forensic Document Examiner, examined the altered postage date. On 11/17/2005, he affirmed: "The questioned date on the postage stamp was viewed with infrared luminescence to reveal the original date was November 11, 2005...the original date (November 11, 2005) was written over with ink as November 9, 2005. Mr. Matheny's fee was **$200.00.**

On 11/21/2005, Plaintiff filed Motion for Judgment by Default (Doc. No. 8) and therein presented Mr. Matheny's report under authority of U.S. Code Title 28 Rule 4 Summons "It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint."

6. On 11/22/2005,(Doc. No. 9), Defendant filed RESPONSE in Opposition to Plaintiff's Motion for Judgment by Default in Judge Conrad's court. Ms. Thompson made numerous denials and allegations.

7. On 01/04/2006, Appendix 3a - Magistrate Keesler's Dispositive Order "...in opposing summary judgment, the non-moving party opposing summary judgment cannot "rest upon...mere allegation or denials..., but ...must set forth specific facts showing that there is a genuine issue for trial..." Defendant never filed objections to it.

7(a) U.S. Code Title 28, Rule 72 Magistrate Judges; Pretrial Orders **(b)** "...the magistrate judge shall enter into the record a recommendation for

disposition of the matter...Within 10 days after being served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations."

7(b) U.S. Code Title 28, Rule 72 NOTES: Notes of Advisory Committee on Rules – **1983** "The last sentence of subdivision (a) specifies that reconsideration of a magistrate's order, as provided for in the Magistrates Act, *shall be by the district judge to whom the case is assigned* (emphasis added)." [1]

- "This rule implements the statutory procedure for making objections to the magistrate's proposed findings and recommendations. The 10-day period, as specified in the statute, is subject to Rule 6 (e) which provides for an additional 3-day period when service is made by mail. Although no specific provision appears in the Magistrates Act, the rule specifies a 10-day period for a party to respond to objections to the magistrate's recommendation."
- "When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. See *Campbell v. United States Dist. Court,* 501 F.2d 196, 206 (9th Cir. 1974), cert. denied, 419 U.S. 879, quoted in House Report No. 94-1609, 94th Cong. 2d Sess. (1976) at 3."

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[1] The case was assigned to Judge Conrad, and he never recused himself.

8. U.S. Code Title 28, Rule 72 NOTES:

Notes of Advisory Committee on Rules – **1991 Amendment,** last 3 lines: "The amendment is also intended to assure that objections to magistrate's orders *that are not timely made shall not be considered"(emphasis added).*

9. The City of Lowell, and its lead lawyer, Mrs. Martha Thompson sought out Mr. Frank G. Johns, District Court Clerk and persuaded him not to sign the judgment by default against it, and he concurred. They all conspired against Hispanic Pro Se Plaintiff.

> Conspiracy, a "meeting of the minds" to participate in a "joint plan of action" or to concoct a "single plan, the essential nature and general scope of which was known to each person who is to be held responsible for its consequences." Simmons, 47 F. 3d at 1377-78 (quoting Lenard v. Argento, 699 F.2d 874, 882-83 (7th Cir. 1983) abrogated on other grounds by Hensley v. Eckerhart, 461 U.S. 424, 436 n. 11 (1983)).

10. On 11/21/2005, (Doc. No. 8) Plaintiff filed Motion for Judgment by Default. In July 2006, eight (8) months later, Judge Frank D. Whitney was appointed to the bench at the USDC.

11. The Magistrate's Dispositive Order was dated 01/04/2006 (App. 3a) Six months later, Mr. Johns, Clerk still had not signed the Judgment by Default against Defendant. **U.S. Code Title 28, Rule 58**

NOTES – Notes of Advisory Committee on Rules – **1946** Amendment, last paragraph: "Inasmuch as it has been held that failure of the clerk thus enter judgment is a "misprision" "not to be excused" (The *Washington* (C.C.A.2d, 1926) 16F. (2d) 206), such a district court rule may have serious consequences for a district court clerk."

12. On 07/10/2006, Appendix 5a - Mr. Johns, Clerk filed an ORDER in the U.S. District Court's Civil Docket for Case No. 3:05-CV-401: "Case reassigned to Judge Frank D. Whitney. Judge Robert J. Conrad, Jr. no longer assigned to the case. *This is your only notice – you will not receive a separate document.* (Wallace, Betsy) Entered 07/10/2006."

There was no case! The only thing pending was for Mr. Johns to have signed the judgment by default against Defendant, but he had refused to do so. This was Mr. John's electronic notice to Mrs. Thompson *mission accomplished!* The USDC communicated with Pro Se Plaintiff only by U.S. Mail, and he never notified Plaintiff of his Order.

13. The Magistrate's Dispositive Order was issued on 01/04/06, Appendix 3a. Defendant never object to it and were in default. On 11/07/2006, Appendix 6a, ten months after Defendant had been in default, Judge Whitney usurped Judge Conrad's defaulted case and *moved the Court* (moved himself) and:

(a) Annulled Magistrate Keesler's Dispositive Order.
(b) Changed it from a *judgment by default* to an *entry of default.*

(c) " ...the envelope postmark of 11 November 2005. ...although the original postmark clearly appears to have been altered to look like it reads 9 November 2005...and *Defendant's late answer is hereby accepted by the Court.*"
(d) Denied Plaintiff's Judgment by Default

Judge Whitney's Order was dated 11/07/2006, Appendix 6a, and it was retroactive to 11/11/2005 when the defaulted case was still physically lodged in Judge Conrad's court. Plaintiff's Judge Conrad and Magistrate Keesler had not done any of the above. Judge Whitney lacked the jurisdiction to have overruled them both.

Defendant's late Answer was in violation of U.S. Code Title 28 Rule 4 Summons "It shall also state the time within which the defendant must appear and defend, and notify the defendant that failure to do so will result in a judgment by default against the defendant for the relief demanded in the complaint."

14. Judge Whitney's ORDER Appendix 9a dated 11/16/2006 "the parties are hereby ORDERED to confer pursuant to Fed. R. Civ. P. 26 (f) and Local Rule 16.1 and jointly file a certification of initial attorney's conference and a proposed discovery plan on or before 11 December 2006." Judge Whitney

moved the defaulted case to trial. Plaintiff's Judge Conrad never did so, because there was no case. Defendant and failed to object to Magistrate Keesler Dispositive Order Appendix 3a.

15. On 11/14/2006 (Doc. No. 15) Plaintiff filed Notice of Appeal on denial of judgment by default.

16. On 11/16/2006, Appendix 9a, Judge Whitney's ORDER. "Plaintiff's Notice of Appeal is construed as a motion for certification of an interlocutory appeal. Motion is **DENIED.** Court will not stay the case pending appeal." On 6/14/07, the 4th Circuit dismissed the appeal No. 06-2214.

17. Judge Frank D. Whitney, Mr. Frank G. Johns, Clerk for the USDC, the City of Lowell and Mrs. Martha Raymond Thompson all conspired and *purposely discriminated* against Hispanic Pro Se Plaintiff and violated Plaintiff's Constitutional Rights protected under the 14th Amendment – Equal protection and privileges.

18. The court's records affirm that Judge Whitney and Mr. Johns, Clerk, conspired and *purposely discriminated* against Hispanic Pro Se Plaintiff and did not apply the Federal Rules of Civil Procedure *equally* to her. They circumvented all Federal Rules to absolve Defendant from the Judgment by Default.

19. On 06/30/2008, after Judge Whitney's Final Judgment, Plaintiff went to the USDC in Charlotte and asked for a print out of her USDC's Civil Docket

case No. 3:05-cv-00401 in preparation for the appeal. Then, for the first time Plaintiff saw Mr. John's Order, Appendix 5a: "Case reassigned to Judge Frank D. Whitney. Judge Robert J. Conrad Jr., no longer assigned to the case. *This is your only notice – you will not receive a separate document.* (Wallace, Betsy) Entered: 07/10/2006."

However, there was no document number next to his order and no recusal order from Plaintiff's Judge Conrad. Mr. Johns' order affirmed that he had *manually* removed the defaulted case from Judge Conrad and had reassigned it to Judge Whitney, so that he would *move the Court* to annul Magistrate's Dispositive Order. Mr. Johns violated:

U. S. Code Title 28 Rule 401 Assignment and Transfer of Cases "*...or after recusal of a judge to whom a case been assigned...* the case shall be assigned... to a judge at *random (emphasis added).*

Then and there, Plaintiff initially realized the conspiracy and purposeful discrimination against her.

SPECIFICATION OF THE STAGE IN THE PROCEEDINGS, BOTH IN THE COURT OF FIRST INSTANCE AND IN THE APPELLATE COURTS, WHEN THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED. RULE 14-1(i).

(1) **11/21/2005** (Doc. No. 8) Plaintiff filed Motion for Judgment by Default in *Judge Conrad's court.*

(2) **11/22/2005** (Doc. No. 9) Defendant filed Response in opposition to Plaintiff's Judgment by default in *Judge Conrad's court.*

(3) **On 01/04/2006** Appendix 3a - Magistrate Keesler issued his Dispositive Order. Defendant never filed any objections to it.

(4) **July 2006** – Judge Whitney appointed to bench.

(5) **07/10/2006** – Appendix 5a - Mr. Johns, Clerk: "Case reassigned to Judge Frank D. Whitney. Judge Robert J. Conrad, Jr. no longer assigned to the case. *This is your only notice – you will not receive a separate document...*"

(6) **11/07/2006** Appendix 6a - Judge Whitney denied Plaintiff's Motion for Judgment Default by filed in Judge Conrad's court on 11/21/2005, and he accepted Defendant's late Answer of 11/11/2005 with the altered and falsified postage meter label of 11/09/2005.

(7) **11/14/2006** (Doc. No. 15) Plaintiff filed NOTICE OF APPEAL_ on Judge Whitney's denial of Plaintiff's Motion for Judgment by Default Case.

(8) **11/15/2006** (Doc. No. 16) Transmission of Notice of Appeal to U.S. Court of Appeals.

(9) **11/16/2006** - Appendix 9a - Judge Whitney: "Plaintiff's Notice of Appeal is construed as a motion for certification of an interlocutory appeal. Motion is DENIED. Court will not stay the case pending appeal."

(10) **11/20/2006** – (Doc. No. 23) USDC Plaintiff filed Appeal to Stay Proceedings in Judge Whitney's court.

(11) **11/24/2006** – 4th Circuit Court of Appeal – Plaintiff filed Motion to Stay Proceedings – Case No. 06-2214. Until after it had ruled on Plaintiff's appeal on Judge Whitney's denial of Judgment by Default.

(12) **12/01/2006** at 4TH Circuit Case No. 06-2214 Plaintiff filed Informal Brief to Appeal Motion for Judgment by Default Case.

(13) **12/19/2006** - Appendix 11a - 4th Circuit denies motion to stay district court proceedings.

(14) **06/14/2007** - Appendix 12a - 4th Circuit DISMISSED Plaintiff's Appeal on Judge Whitney's denial of Judgment by default. – "This court may exercise jurisdiction only over final orders..."

(15) **07/24/2007** (Doc. No. 33) Plaintiff filed Motion for Judge Whitney to Reconsider Judgment by Default. "Pro Se Plaintiff herewith presents unimpeachable evidence that Mrs. Thompson made fraudulent, deceptive statements to the Court which the Court overlooked in its decision."

(16) **08/27/2007** – Appendix 13a- Judge Whitney DENIED Motion to Reconsider.

(17) **05/07/2008** (Doc. No. 77) & (Doc. No. 81) Amendment. Plaintiff's Motion For District Court Clerk To Enter Judgment by Default Filed 11/21/05 As a Matter of Law for the Relief Demanded in the Complaint.

(18) 05/08/2008 Appendix 15a - Judge Whitney DENIED Plaintiff's Motion For District Court Clerk To Enter Judgment by Default Filed 11/21/05 As a Matter of Law for the Relief Demanded in the Complaint.

"This motion for default judgment is but the latest incarnation of several attempts on the part of pro se Plaintiff to obtain an entry of default and default judgment against Defendant.

"On November 21, 2005, Plaintiff moved for judgment by default, alleging that Defendant's Answer was untimely and that Defendant had falsified the postage date to make it appear as if its Answer were. In fact, timely. . . . *The Court, construing Plaintiff's motion as one of entry of default,"*[1] (emphasis added).

[1] Pro se Plaintiff objected to this construction, calling it a "travesty of justice" (Doc. No. 24), but the Court notes that a default judgment, under Federal Rule of Civil Procedure 55, must be preceded by an entry of default. The Court was therefore following its duty to construe the motions of pro se plaintiffs charitably in order to prevent legal technicalities from hindering their claims."

"Neither the Defendant nor its attorney have gained an unfair advantage ... it is arguably Plaintiff who is attempting to gain an unfair advantage by seeking to obtain a favorable judgment based on a *technicality* ..." (emphasis added).

(19) **06/13/2008** – Appendix 18a Judge Whitney granted City of Lowell's Summary Judgment.

(20) **06/16/2008** – (Doc. No. 93) Plaintiff filed Notice of Appeal at the USDC.

(21) **06/16/2008** – (Doc . No. 94) Transmission of Notice of Appeal to US Court of Appeal .

(22) **06/30/2008** – Plaintiff initially realized that Judge Frank D. Whitney had never had jurisdiction over Plaintiff's case. See Statement of Case No. 19.

(23) **07/12/2008** - Plaintiff filed Informal Brief at the 4th Circuit Court of Appeal to appeal Judge Whitney's judgment. Case No. 08-1682.

(24) **12/12/2008** - Appendix 42a - The 4th Circuit dismissed appeal "...insofar as she claims there was a conspiracy between the district court and the City of Lowell, such claim is delusional."

(25) **12/19/08**, Plaintiff filed Petition for Rehearing.

(26) **12/23/2008** – Appendix 44a - 4th Circuit issued Stay of Mandate. "This Court's mandate has been stayed pending disposition of a petition for panel and/or en banc rehearing."

(27) **01/23/2009** – Appendix 45a - "The Court denies the petition for rehearing."

THE REASONS RELIED ON FOR THE ALLOWANCE FOR THE WRIT

Judge Frank D. Whitney, Mr. Frank G. Johns, Clerk for the USDC, the City of Lowell and Mrs. Martha Raymond Thompson all *conspired* and *purposely discriminated* against Pro Se Plaintiff. Their purpose was to deny Plaintiff's Judgment by Default and annul Magistrate Keesler's Dispositive Order. They stripped this Hispanic minority of her Constitutional Rights and conspired to interfere with her civil rights. All the conspirators assumed that this *Hispanic minority* was not *too bright*, so their overt acts of *conspiracy* and *purposeful discrimination* against her would go unchallenged.

Fortunately, this *Hispanic minority* has several Bachelor Degrees and a Master of Education from the University of New Orleans. This Writ of Certiorari should be included in the 1% which this Court hears because it will protect all minorities Pro Ses' Constitutional Rights. If there is no justice for this one Hispanic minority, then there is no justice for all minorities. They violated:

A. Hispanic Pro Se Plaintiff's Constitutional Rights of the equal protection clause of the Fourteenth Amendment, and

B. 42 USCS § 1985(3) Conspiracy to interfere with civil rights.

1. Conspiracy a "meeting of the minds" to participate in a "joint plan of action" or to concoct a "single plan, the essential nature and general scope of which [was] known to each person who is to be held responsible for its consequences." Simons, 47 F. 3d at 1377-78 (quoting Lenard v. Argento, 699 F.2d 874, 3882-83 (7th Cir. 1983) abrogated on other grounds by Hensley v. Eckerhart, 461 U.S. 424, 436n.11 (1983)).

2. "In order to recover under 42 USCS § 1985(3), plaintiff must allege and prove (1) conspiracy: (2) for purpose of depriving, directly or indirectly, person or class of person of equal protection of laws or of equal privileges ...(3) overt act in furtherance of object of conspiracy; and (4) that plaintiff (a) was injured...or (b) was deprived of having and exercising right or privilege of United States Citizen." Byrd v. Clark (1986, CA 11 Ga) 783 F 2d 1002.

3. "Complaint to recover for conspiracy to deprive one of his civil rights is sufficient if it alleges (1) a conspiracy between two or more persons for the purpose of depriving any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the law, and (2) an act by one of the conspirators in furtherance of the object of the conspiracy whereby another person was (a) injured, or (b) deprived of exercising any right or privilege of a citizen of the United States." Girard v 94th Street & Fifth Ave. Corp. (1975, SD NY) 396 F Supp 450, affd (1976, CA2 NY) 530 F2d 66, cert den (1976) 425 US 974, 48 L Ed 2d 798, 96 S Ct 2173.

4. Such a requirement " is simply one aspect of the basic principle that only if there is *purposeful discrimination* (emphasis added) can there be a violation of the Equal Protection Clause of the Fourteenth Amendment," 446 US, at 66, 64 L Ed 2d 47, 100 S Ct 1490, and White v. Regester is consistent with that principle. 446 US, at 69, 64 L Ed 2d 47, 100 S Ct 1490.

5. "The equal protection clause of the Fourteenth Amendment provides a more explicit safeguard of prohibited unfairness than the due process clause of the Fifth Amendment." U.S. – Collins v. Finch, 311 F. Supp. 301 (W.D. Pa. 1970); U.S. v. Baker, 262 F. Supp. 657 (D. D.C. 1966).

The 4th Circuit erred to ignore the clear evidence that Judge Whitney lacked the jurisdiction to have ruled on Judge Conrad's defaulted case.

Appeal and Error § 1339 – scope of review 18a, 18b. "The Supreme Court will not address a contention not raised in the Court of Appeal and not addressed by that court." Respectfully, Plaintiff herewith challenges the 4th Circuit's errors - Appendix 42a.

1. **"We note Karagiannopoulos in her informal brief failed to challenge the district court's findings with respect to the order granting summary judgment."**

1(a) Plaintiff's Informal Brief Issue #7 pgs.12, 13:

"Mr. Frank G. Johns,...Clerk, should have entered the Judgment by Default against the Defendant on January 4, 2006. On July 10, 2006, App. ___six (6) months later, he made the following computer entry...: "Case reassigned to Judge Frank D. Whitney. Judge Robert J. Conrad, Jr. no longer assigned to the case. This is your only notice – you will not receive a separate document..." 7(1) "Please take special note that... next to this entry of July 10, 2006...there is no document number because Judge Robert J. Conrad Jr., never recused himself from this case..." 7(3) There was no case!" The only thing pending was his entry of judgment by default..."

1(b) Plaintiff's Informal Brief Issue No. 8(1) pg. 13:

"Plaintiff's Judge Robert J. Conrad, Jr., never recused himself from Plaintiff's case." Judge Whitney never

had the jurisdiction to issue the order granting summary judgment..."

1(c). Plaintiff's Informal Brief Issue No. 10(1) pg. 16:
"Judge Whitney lacked the jurisdiction to rule on a motion which had *never* been filed in his court. Plaintiff's Motion for Judgment by Default had been filed in Judge Conrad's court on 11/21/2005 ...Judge Whitney was appointed to the bench ...in July 2006."

1(d) Plaintiff's Informal Brief Issue No.10 pg. 15:
"In response to Plaintiff's Motion for Judgment by Default...filed in Plaintiff's Judge Conrad's court on November 21, 2005 (Doc. No. 8) Judge... Whitney... ruled one year later (Doc. 14, dated 11/07/2006) "...Defendant's late answer (November 11, 2005) is hereby accepted by the Court." "Thereby, he affirmed that his Order was retroactive to 12 months before to November 11, 2005, when the case was in Judge Conrad's court. He lacked the jurisdiction to rule on Judge Conrad's case. In addition, Defendant's late answer had not been accepted by Judge... Conrad or Magistrate Keesler, and Defendant had already lost by judgment by default. Judge Whitney lacked the jurisdiction to reverse an adjudicated motion."

1(e)Plaintiff's Informal Brief Issue No. 13(1) pg. 22:
"Judge Whitney lacked the jurisdiction to rule retroactively on a motion that had been filed and 26 adjudicated in Judge Conrad's court one year before." At ¶2 -"Judge Conrad **did not** deny

Plaintiff's Motion for Judgment by Default, and Judge Whitney lacked the jurisdiction to overrule in Judge Conrad's case."

1(f) Plaintiff's Informal Brief Issue No. 17 pgs 25

"Plaintiff filed Motion to Reconsider – Judgment by Default. Therein,.. proved to the Court that Mrs. Thompson indeed was the only one who had altered and falsified the envelope and that she had made five (5) perjurious statements...."The Court did not deny Plaintiff's motion because it necessarily believed defense counsel's account of events...it is arguably Plaintiff who is attempting to gain an unfair advantage by seeking to obtain a favorable judgment based on a *technicality* ..."

1(g) Plaintiff's Informal Brief Issue No. 18 pgs. 26-27

"Judge Whitney in the footnote: "Indeed the Court ordered defense counsel to show cause why she should not be personally sanctioned for the alleged misconduct, and, and decided not to award any sanctions primarily because Plaintiff herself refused to accept any lesser sanction than a default judgment." At ¶2, pg. 27 - He proposed to reimburse Plaintiff $200.00 ...an additional $50.00 .....Judge Whitney's real purpose was to *kill* the whole issue of the falsified envelope and mail fraud to protect the Defendant...Plaintiff refused his offer to protect her at the appellate level."

2. **"...except for two meritless challenges to the court's decision to admit and review two items of evidence."**

2(a) Plaintiff's Informal Brief Issue No. 22, page 32: "The City of Lowell deliberately altered and falsified Mr. Gosnell's application for a zoning text amendment Exhibit "A," but it knew that Judge Whitney, was on their "team," and would never object to it (Doc. No. 87, filed 5/28/2008, Section III, pgs. 5-8)."

2(b) Mr. Morrow's Affidavit (Doc. No. 1) Ex.2, pg. 11 At ¶2 " On January 1, 1959, my wife and I purchased commercial property from the *National Weaving Company under Map No. 3* ...We purchased lots No. **3 through 9**...At ¶5, pg. 12 " In 1985, I sold my business to Mr. Gosnell who owned the adjacent lots **No. 1 and 2** with the two brick buildings."

In (Doc. No. 87) Ex. 18, pg. 101 on top of that exhibit it clearly states "*Map No. 3 National Weaving Co.*" and outlines lots 1, 2, 3, 4, 5, 6, 7, 8, 9. (**Note**: All of the other adjacent lots next to Main Street belonged to Guilford Mills, Inc.).

2(c) Above, Mr. Morrow attested that he sold his business to Mr. Gosnell in 1985. Gaston County's Parcel Deed History records only one entry in 1985 Exhibit 4, pg. 19 and that was on **09/01/1985.**

2(d) On June 11, 1997, Guilford Mills, Inc. gave away their property to the adjacent owner Mr. Jack Sexton and wife under a QuitClaim Deed. (Doc. No. 87) Ex. 7, pgs. 52-54. The City applied lot **No. 54** to that.

2(e) Plaintiff 's Warranty Deed is dated 10/14/2003 (Doc. No. 87) Ex. 18, pg. 98-100. Top of 1st page it records: "Book 3851, pages 427-430." The 1st page of the Deed states "Brief description for the index: "**Lots 1-9, National Weaving Co.** On pg. 99 (Bk. 3851-pg 428) PROPERTY DESCRIPTION , it describes **nine (9) Lots only**: 1, 2, 3, 4, 5, 6, 7, 8 and 9. *In addition*, on pg. 100, (Bk. 3851 pg. 429) "Together with all the grantors' right, title and interest in the following described property." That *described property* is the verbatim text of Guilford Mills, Inc.'s QuitClaim Deed to Mr. Sexton dated **06/11/1997** (Doc. No. 87) Ex. 7, pg. 54. Thereby, Plaintiff's property consists of a total of **ten (10) lots**. The City of Lowell applied their in-house Lot **No. 54** to the QuitClaim Deed lot.

2(f) The City of Lowell edited the original "Map No. 3 National Weaving Co." (Ex. 18, pg. 101) and superimposed their own in-house lot numbers Ex. 19, pg. 104. For lot Nos. 1 and 2, it applied Nos. 46-47. For lot Nos. 3 through 9, it applied lot Nos. 47.01 through No. 53. The City's lot **No. 54** represents Guilford Mills QuitClaim Deed dated **06/11/97** to Mr. Sexton (Doc. No. 87) Ex. 7, pgs. 52-54. Adding all of the City's lot numbers 46, 47, 47.01, 48, 49, 50, 51, 52, 53 and 54 all add up to **ten (10) lots** which corresponds to Plaintiff's Warranty Deed.

2(g) (Doc. No. 87) pg. 5, at ¶1 - "On **5/21/85**, Mr. Gosnell applied for a zoning text amendment for **39 Lineberger Street** (Exhibit 19, pgs 103-104)." His application states he was the "owner" and requested re-zoning from R-8 Residential Multi-family to C-2 Neighborhood Business.The City altered and falsified

Mr. Gosnell's application and used Plaintiff's lot numbers for **Main Street**. The City typed in "Lots [1] 47, 47.01, 48, 49, 50, 51, 52, 53, and **54** and attached their altered and falsified zoning map on pg. 104. At the bottom, the Planning Board "*Recommend the request* **2-19-85.**" Thereby, it had "r*ecommended the request"* three (3) months before Mr. Gosnell had ever even filed for the application: **5/21/1985.**

2(h) The above documents attest:

- Gaston County's Parcel Deed History records that Mr. Gosnell bought the property on 09/01/1985. Ex. 4, pg. 19.
- Mr. Goznell had owned Lots No. 1 and 2. After he bought Mr. Morrow lots No. 3 - 9, he then owned a total of **nine (9) lots.** Those **nine lots** are described in "Map No. 3 National Weaving Co." (Ex. 18, pg. 101)
- Guilford Mills' QuitClaim Deed to Mr. Sexton dated 06/11/1997, Ex. 7, pgs 52-54. The City applied their lot No. 54 to it. Mr. Gosnell *never* owned **Lot No. 54.**

2(i) Mr. Gosnell's application is dated **5/21/1985**, Ex. 19, pg. 103. At that time, he only owned Lots No. 1 and 2 (City's Lot. Nos. 46 – 47). He could not have asked to rezone Mr. Morrow's Lots 3-9 because he did not buy them until **09/01/1985**,(Doc. 87) Ex. 4, pg. 19, and he never, owned Lot. **No. 54.**

2(j) Plaintiff's Informal Brief Issue No. 22, page 32 made reference to (Doc. No. 87) filed 5/28/08 Section III, pgs. 5-8:

1 Note on top of Mr. Gozonell application it is hand written " . . . noticed a clerical error that parcel **#46** has been left out of rezoning request."

(Doc. No. 87) At pg. 5, ¶2 – " Plaintiff's lots are: 1,2,3,4,5,6,7,8, 9. See Plaintiff's Warranty Deed...At pg. 6, ¶5, line 6: "In 1985, Lot "54" belonged to Guilford Mills. In 6/13/97, Guilford Mills relinquished all their rights and gave that lot to Mr. Sexton under a QuitClaim Deed. Therefore, Mr. Gosnell could not have applied for zoning text amendment for lot **"54"** when he did not own it This shows the Court that Defendant, with malice, altered the map to prevent Hispanic Plaintiff from obtaining a C-3 license. At pg 7, ¶7, "Mr. Morrow affirmed that he sold the property in **1985.** The Parcel Deed History ...shows only <u>one</u> entry in 1985 and that was in **9/01/1985**. Defendant's Exhibit "A" is dated **5/21/85**. In May 21, 1985, Mr. Gosnell was only the owner of Lots 1 and 2. He could not have applied for a zoning text amendment for lots, 3, 4, 5, 6, 7, 8, and 9 because he was not the owner of those adjacent lots until September 1, 1985... At, pg. 7, ¶8, "Mr. Gosnell's application indicates 39 Lineberger but **not** for 901 N. Main Street. Mr. Morrow's Affidavit affirmed..."Mr. Gosnell continued to sell used cars from that same location for five years...At ¶9, "Mr. Johnson's Affidavit, the previous owner, affirmed to the Court that: "I recall that Mr. Gosnell had a pool hall at 901-905 N. Main Street in Lowell for many years. I used to go in there and shoot pool." At pg 8, ¶11, "The Defendant with malice *altered* Mr. Gosnell's original application for 39 Lineberger and typed in with an electric typewriter Lots 47, 47.01, 48, 49, 50, 51, 52, 53 and **54** on N. Main Street adjacent to Railroad.."

2(k) Defendant's Memorandum of Law in Support of Motion for Summary Judgment (Doc. 72) 4/30/2008: The City submitted several perjurious Affidavits and certifications to buttress their altered and falsified Exhibit "A" and map:

- At pg. 5 ¶2 Chronology - May 21, 1985 – Gosnell applied for zoning amendment of property to C-2 (Colgate Aff., Exh A).
- At, pg. 5, ¶2, July 8, 1985 – following public hearing, property rezoned to C-2 (Colgate Aff., Exh.B).
- At pg, 6,¶ 2, January 1997 – new zoning map created, portion is attached (Colgate Aff. Exh R).
- At pg. 8, ¶ 1 "The City did not change the zoning on the property, other than upon petition in 1985, when it was changed from R-8 to C-2."
- At pg. 17, at bottom of ¶1, "...the zoning ordinances at issue show that the property had been zoned C-2, where auto sales were disallowed, since 1985."
- At pg. 25, ¶2, "City documents and maps indicate the property has been zoned C-2 since 1985."
- Judy Colgate, City Clerk officially signed "Exhibit D"(Doc. No. 87) Ex. 5, pg. 30. reflecting the change to C-2.(See the circled property).
- "Affidavit of City Manager" (Doc. No. 72)- Mr. Blackburn: At ¶5- "City records indicate that the zoning on the subject property was changed to C-2 by petition of Melvin Gosnell; following a public hearing and city council vote on **July 9, 1985.**"

2(l) On 06/06/2008, (Doc. No. 88) Defendant's Reply to Plaintiff's Response to Defendant's Motion for Summary Judgment (#69). The City did not contest a single piece of evidence but claimed that Plaintiff's charges were *pure speculation*:

- **At Pg. 6, ¶1** – "Claims by Plaintiff that the City has falsified or altered every supporting document presented, which is contrary to her allegations do not rise to the level of creating a legitimate factual issue. Plaintiff basis her attacks on the documents and statements by defendant's agents on **pure speculation**."
- **At pg. 7, ¶2** "Except for **unfounded speculation** as to the authenticity of official public documents presented to the court via affidavit, Plaintiff is unable to legitimately challenge any of the material facts before the court."
- **At pg. 8, ¶2,** "..Plaintiff cannot create an issue of fact nor can Plaintiff create an expectation of legitimacy to her claim, by refusing to acknowledge the stark facts that all official records designate the property has been a C-2 classification for years."

2(m) Plaintiff's Informal Brief Issue No. 22(1)pg. 32:

At ¶1 -" At the oral arguments, Plaintiff had three (3) illustration boards to show the Court that the City of Lowell had altered and falsified Mr. Gosnell's Application Exhibit "A." Judge Whitney cut Plaintiff short, and he refused Plaintiff to continue. Then, in Judge Whitney's Judgment, his only reference was a mere *footnote* on page 6." ([4] Appendix 24a and 25a.)

Judge Whitney's Final Judgment, Appendix 39a, At ¶2 " Finally, the Court rejects Plaintiff's outlandish claim that the City and/or defense counsel fraudulently altered certain maps and zoning documents ...and the Court will not countenance them as such."

2(n) Plaintiff's Informal Brief Issue No. 23 page 33: At ¶2 - "At the Oral arguments, Plaintiff objected to the Court that Defendant had submitted an additional exhibit which Plaintiff had not yet received in the mail. (No comment from Judge Whitney)..."At ¶3 – "...Plaintiff had profusely objected to Defendant's Exhibit "D" (map) and pointed out that it was a fraudulent map...Mrs. Thompson filed that exhibit to contradict Plaintiff's claim."

3. " We find Karagiannopoulos' various challenges to the court's order denying the motion for default judgment to be entirely without merit and...We find the court did not abuse its discretion by denying the motion for default judgment."

3(a) The 4th Circuit seriously erred in ruling: We find the court did not abuse its discretion by denying the motion for default judgment." The chronology of events shows that Judge Whitney abused his power. He deceptively implied that Defendant's *Response in Opposition for Judgment by Default* dated 1/22/2005 were "the facts at bar" that had *moved* the Court for his Order. The filings' chronology shows that Judge Whitney was the one who had *moved the Court* (himself) to annul Magistrate Keesler's ...Order..."

CHRONOLOGY OF FILINGS

11/21/2005 -	(Doc. No. 8)	Plaintiff's Motion for Judgment by Default
11/22/2005 -	(Doc. No. 9)	Defendant's Response to Judgment by Default
01/04/2006 -	App. 3a	Magistrate Keesler's Dispositive Order
11/07/2006 -	App. 6a	Judge Whitney denied Judgment by Default

Plaintiff's Informal Brief, Issue No. 12, pages 19-21

Judge Whitney...Where defendant appears an indicates a desire to contest an action, a court may exercise its discretion to refuse to enter default ... applying these same principles to the facts at bar, the Court finds no justification for entry of default against the Defendant ... herewith Judge Whitney's role is clearly defined...He was there as Defendant's lead lawyer to protect his *client* from the law. **(12)5** Judge Whitney is referring to ... filed 11/22/05 Defendant's Response to Plaintiff's Motion for Judgment by Default ... The Magistrate Judge had already ruled on that same response "... in opposing summary judgment, the non-moving party ... must set forth specific facts showing that there is a genuine issue for trial ... Judge Whitney lacked the jurisdiction to accept Defendant's Response ... one year later when it had not been accepted by Magistrate Judge... or Plaintiff's Judge Conrad. **12(6)** Judge Whitney's Order affirmed it was retroactive back to

November 22, 2005...it had been filed on November 22, 2005 in Judge Conrad's court, and Judge Whitney lacked the jurisdiction to rule on Judge Conrad's case."

3(b) Plaintiff's Informal Brief Issue No. 5(3) pg. 11

"**Legal Standard** – FRCP 4 Summons (a) "It shall also state the time within which defendant must appear and defend, and notify the defendant that failure to do will result in a judgment by default against the defendant in the complaint."

3(c) Plaintiff's Informal Brief Issue No. 20, pgs.29-31:

"On 5/07/08, ...Plaintiff filed for District Court Clerk to Enter Judgment by Default, and amendment (Doc. No. 81) filed 5/09/08. It was denied by Judge Whitney ...He claimed that he had changed it to an *entry of default* because that is what he thought Plaintiff had wanted: **(A)** "The Court, construing Plaintiff's motion as one for *entry of default* . . . concluded that there was no "justification for *entry of default* against the Defendant, especially where Plaintiff is in actual receipt of the answer... the Court was therefore following its duty to construe the motions of pro se plaintiffs charitably in order to prevent legal technicalities from hiding their claims...**(20(3)** ...Judge Whitney implied as if the Motion for Judgment by Default had been recently filed in his court; it was never filed in his court. It was filed in Judge Conrad's court. **20(4)** Plaintiff's Judgment by Default was clear

to the Magistrate Judge Keesler and to Judge Conrad."

Judge Whitney was disingenuous, *again.* He deceptively implied that Plaintiff's Motion for Judgment by Default dated 11/21/2005 had been filed in his court. "The Court, construing Plaintiff's motion as one for entry of default..."

3(d) Plaintiff's Informal Brief Issue No. 19 pgs. 27-28:

"As a matter of law, the Defendant lacked the legal right to file Motion for Summary judgment ... (1) " It had lost by Judgment by Default because it failed to"...must set forth specific facts showing that there is a genuine issue for trial" (2) Defendant reinstated the case through illegal ... conspiratorial means, but it was not valid. (3) Defendant never filed a *formal* Answer to complaint..."She signed the Certificate of Service certifying that she had served Plaintiff at: 101 West First Street Lowell, North Carolina. That is Defendant's address, and Plaintiff never received that mailing. ... Defendant has never filed a *formal* Answer to Complaint. FRCP Rule 56 – Notes of Advisory Committee on Rules – 1946 Amendment – Subdivision (a) "... operates to prevent a claimant from moving for summary judgment, **until a formal answer has been filed** (emphasis added).."

3(e) Plaintiff Informal Brief Issue No. 20, pg. 29:

"On 5/07/08, Plaintiff filed (Doc. No. 77) for District Court Clerk to Enter Judgment by

Default, and amendment (Doc. No. 81) filed 5/09/08. It was denied by Judge Whitney (Doc. No. 79). Judge Whitney was very disingenuous. He claimed that he had changed it to an *entry of default* because that is what he thought Plaintiff had wanted. (A) "The Court, construing Plaintiff's motion as one for *entry of default,* concluded that there was no "justification for *entry of default* against the Defendant... 20(4) pg. 31, Plaintiff's Judgment by Default was clear to Magistrate Judge Keesler and to Judge Conrad. In response to Plaintiff's Judgment by Default the Magistrate Ordered Appendix 3a "... in opposing summary judgment, the non-moving party opposing summary judgment cannot "rest upon ... mere allegations or denials ... but, must set forth specific facts showing that there is a genuine issue for trial..."

4. "...insofar as she claims there was a conspiracy between the district court and the City of Lowell, such claim is delusional."

4(a) The 4th Circuit *edited* Plaintiff's Informal Brief and mockingly diagnosed Plaintiff as *delusional!*

Delusional 2 a: something that is falsely or delusively believed or propagated b: a persistent **false psychotic belief** regarding the self or persons or objects outside the self that is maintained despite indisputable evidence to the contrary ; *also* : the abnormal state marked by such beliefs. **http:// www. Merriam- webster.com/dictionary/delusional**

4(b) On 12/19/08, Plaintiff filed Petition for Rehearing, and asked the 4TH Circuit to affirm that "...indeed Judge Whitney was Plaintiff's official judge." Had they affirmed it; then, there was no conspiracy, and their diagnosis of Plaintiff's **delusional** false psychotic belief would have been validated. On January 23, 2009, "The Court denies the petition for rehearing." App. ---. The 4th circuit erred to have ignored the clear and convincing evidence that Judge Whitney had lacked the jurisdiction to have issued *"the court's findings ...order granting summary judgment"* on Judge Conrad's defaulted case.

4(c) Plaintiff's Informal Brief Issue No. 1, pg 4.
"Defendant's lead lawyer, Mrs. Martha Raymond Thompson, altered and falsified the postage date on the Pitney Bowes Postage Metered Machine from November 11, 2005 to November 9, 2005."

4(d) Plaintiff's Informal Brief, Issue No. 10, pg. 16:
"10(1) Judge Whitney lacked the jurisdiction to rule on a motion which had never been filed in his court. Plaintiff's Motion for Judgment by Default ...was filed in Judge Conrad's court on November 21, 2005, and it had already been adjudicated. Judge Whitney was appointed to the bench eight (8) months later in July 2006."

4(e) Plaintiff's Informal Brief Issue No 11, pgs. 17-18:
"Judge Whitney "...although Plaintiff's motion is captioned as a motion for *judgment by default,* the record shows that *no default* has yet been entered

against the Defendant, and so the Court will treat the motion as one for the *entry of default ...*"

On 11/07/2006, App. __, ten months after Defendant had been in default, Judge Whitney, on his own volition, *moved the Court* (himself) to deny Plaintiff's Judgment by Default. He annulled Magistrate Keesler's Dispositive Order , App. --.

5. "[I]n situations where a party is not responsible for the *fault* (emphasis added) of his attorney, dismissal may be invoked only in extreme circumstances." Id.

Fault. Black's Law Dictionary 641 (8th ed. 2004) (1) An error or defect of judgment or of conduct; any deviation from prudence or duty resulting from inattention, incapacity, perversity, bad faith, or mismanagement."

The 4th Circuit erred in ruling it "...*fault* of his attorney" when in fact it was deliberate *mail fraud* and *perjury* and *conspiracy* of his attorney; all of which are Federal Crimes.

5(a) The 4th Circuit "...dismissal may be invoked only in extreme circumstances." They erred in over ruling Magistrate Keesler's Dispositive Order – App. – "in opposing summary judgment, the non-moving party opposing summary judgment...must set forth specific facts showing there is a genuine issue for trial..." They ruled in favor of the Defendant, but they had *never* filed any objections to it in the District Court or the Appellate Court.

5(b)Plaintiff's Informal Brief, Issue No. 1, pgs 4-5:

"Defendant's lead lawyer, Mrs. Thompson, altered and falsified the postage date from November 11, 2005 to November 9, 2005." **1(3)** "The envelope...had been addressed to **901 W. First Street**...a non-existent address. Plaintiffs address is **901 N. Main Street....**" **1(5)** Mr. Matheny issued the Results of Examination." The questioned date on the postage stamp was viewed with infrared luminescence to reveal that the original date (November 11, 2005) was written over with ink as November 9, 2005." **(6)** "Mrs. Thompson willfully altered and falsified the postage date on the envelope and committed mail fraud."

5(c) Plaintiff's Informal Brief Issue No. 2 pg. 6:

"Inside the altered and falsified envelope, Mrs. Thompson further falsified the date on the Certificate of Service attesting that she had served Plaintiff on the **9th day** of November when it was actually the **11th** day of November 2005."

5(d) Plaintiff's Informal Brief Issue No. 2(3), pg. 7:

"Mrs. Thompson committed perjury. § 931. Art. 131 Perjury " Any person subject to this chapter who in a judicial proceeding or in a course of justice willfully and corruptly (2) in any declaration, certificate subscribes any false statement material to the issue of matter of inquiry; is guilty of perjury and shall be punished as a court-martial may direct."

5(e) Plaintiff's Informal Brief Issue No. 3, page 7: "Defendant never served Plaintiff with its Answer to Complaint, and Plaintiff's Judge Conrad concurred."

5(f) Plaintiff's Informal Brief Issue No. 4, page 7:

> "Defendant has never filed a *formal* Answer to Complaint in the USDC...**4(1)** On November 10, 2005...Defendant mailed its Answer to Complaint to the USDC. Therein she attested she had served Plaintiff on the 9th of November at: **101 West First Street**...that is Defendant's address...Plaintiff never received that mailing. Plaintiff's address is 901 N. Main Street."

6. "Accordingly, we affirm the district court's order and judgment."

CONCLUSION

The 4th Circuit erred to have affirmed the aforementioned conspiracy and purposeful discrimination against Hispanic pro Se Plaintiff. Furthermore, they mockingly diagnosed Plaintiff as *delusional.* The Fourth Circuit Court of Appeal has sanctioned such a departure by a lower court as to call for an exercise of this Court's supervisory power.

Judge Frank D. Whitney lacked the jurisdiction to have granted a final judgment in Judge Conrad's defaulted case, and this Court should vacate it. Furthermore, this Court should affirm Magistrate David C. Keesler's Dispositive

Order, and Order Mr. Johns, Clerk for the USDC to sign the Judgment by Default against the Defendant as a matter of law.

I, Aura LaBró Karagiannopoulos, Pro Se Plaintiff-Petitioner, hereby declares under penalty of perjury that the foregoing is true and correct on this the 22nd day of July 2009.

Respectfully submitted,

A L Karagiannopoulos

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APPENDIX

APPENDIX

No.	DATE	ORDER	Pg.
1	01/04/06	Magistrate David C. Keesler's Dispositive Order (Doc. No. 13-1) at bottom.	3a
2	07/10/06	Clerk: "Case reassigned to Judge Frank D. Whitney. Judge Robert J. Conrad, Jr. no longer assigned t o the case. *This is your only notice – you will not receive a separate document...*	5a
3	11/07/06	Judge Whitney denies Motion for Judgment by Default and vacated Magistrate's Keesler's Dispositive Order (Doc. No. 14).	6a
4	11/16/06	Judge Whitney denies motion for interlocutory appeal and he will not stay the case. (Doc. 17)	9a
5	12/19/06	4th Circuit denies motion to stay (No. 06-2214).	11a

APPENDIX – Continued

No.	DATE	ORDER	Pg.
6	06/14/07	4th Circuit denies appeal on Judge Whitney's denial of Plaintiff's Motion for Judgment by Default (No. 06-2214).	12a
7	08/24/07	Judge Whitney denies Plaintiff's Motion to Reconsider his denial of Plaintiff's Judgment by Default (Doc. No. 37)	13a
8	05/08/08	Judge Whitney denies Plaintiff's Motion: "Motion for District Court Clerk to Enter Judgment by Default filed 11.21.05 As a Matter of Law for the Relief Demanded in the Complaint" (Doc. No. 79)	15a
9	06/13/08	Judge Whitney's Final Judgment (Doc. No. 91).	18a
10	12/12/08	4th Circuit dismissed Plaintiff's appeal Unpublished (No. 08-1682).	42a
11	12/23/08	4th Circuit's Stay of Mandate No. 3:05-cv-00401-FDW-DCK	44a
12	01/23/09	4th Circuit denies petition for rehearing No. 08-1682	45a

APPENDIX NO. 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH
CAROLINA – CHARLOTTE DIVISION

Civil Action No: 3:05-CV-401Date of entry:
01/04/2006 – Document No. 13-1

Signed by: David C. Keesler U.S. Magistrate Judge

Karagiannopoulos , Plaintiff vs. City of Lowell, Defendant	ORDER

THIS MATTER IS BEFORE THE COURT, ON THE "Motion to Strike and Memo of Law in Support Thereof..." (Document No. 6), filed November 10, 2005 by the City of Lowell (the "City"). In the Motion, the City asks the Court to strike Exhibits 1, 2, 3, 4 and 6 to the Complaint (Document No. 1), alleging that they are "immaterial, incompetent, impertinent, and constitute hearsay."

Under Rule 12(f) of the Federal Rules of Civil Procedure, the undersigned – in his discretion – "may order stricken from any pleading...any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). After careful review, and considering Aura Labró Karagiannopoulos' status as a pro se plaintiff and the burden placed upon the Court in such situations, see. e.g., North Carolina v. Howard. 323 F. Supp. 2d 675, 678 (W.D. N.C. 2003) (outlining responsibilities of district court in ruling

upon motion to dismiss pro se complaint), the undersigned does not find that the contested exhibits should be stricken as "redundant, immaterial, impertinent, or scandalous." Accordingly, the undersigned will deny the Motion The Court will, of course, apply the appropriate standard of review in its consideration of those exhibits as they relate to any future dispositive motions. See, e.g., Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (in opposing summary judgment, the non-moving party opposing summary judgment cannot "rest upon ... mere allegation or denials ..., but ... must set forth specific facts showing that there is a genuine issue for trial" (quoting First National Bank of Arizo0na v. Cities Service Co., 319, U.S. 253, 288-90 (1968)).

IT IS, ORDERED that the "Motion to Strike and Memo of Law in Support Thereof ..." (Document No. 6) is hereby **DENIED.**

Signed: January 4, 2006
/s/ DAVID. C. KEESLER

David C. Keesler
United States Magistrate Judge

APPENDIX NO. 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH
CAROLINA – CHARLOTTE DIVISION

U. S. District Court
Western District of North Carolina (Charlotte)
Civil Docket for Case #:3:05-cv-00401-FDW-DCK

Karagiannopoulos vs. City of Lowell

Date of entry: **07/10/2006 – No Document Number**

Entered by: Mr. Frank G. Johns, Clerk of USDC

Date Filed	#	Docket Text
07/10/2006		Case reassigned to Judge Frank D. Whitney. Judge Robert J. Conrad, Jr. no longer assigned to the case. *This is your only notice – you will not receive a separate document.* (Wallace, Betsy) Entered: 07/10/2006

APPENDIX NO. 3

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH
CAROLINA – CHARLOTTE DIVISION

Civil Action No: 3:05-CV-401
Date of entry: 11/07/2006 – Document No. 14
Signed by: Judge Frank D. Whitney

Karagiannopoulos , Plaintiff v. City of Lowell, Defendant	ORDER

THIS MATTER is before the Court on Plaintiff's Motion for Judgment by Default (Doc. No. 8). The facts supporting the motion are these: Upon service of summons and the complaint, counsel for Defendant filed an appearance and obtained an extension of time, until 9 November 2005, to file a responsive pleading. Defendant's answer in the official court record bears a "filed" date stamp of 10 November 2005 (i.e., one day late), but contains an attorney certification that a copy of the answer had been served by mail on Plaintiff on 9 November 2005. However, the envelope containing the copy of the answer served on the Plaintiff by mail bears the original postmark of 11 November 2005 (i.e., two days late),[1]

---

[1] Plaintiff retained the expert services of a forensic document examiner to view the envelope with infrared luminescence and confirm the true postmark as 11 November 2005.

although the original postmark clearly appears to have been altered to look like it reads 9 November 2005 (the date the answer was supposed to be served).

Although Plaintiff's motion is captioned as a motion for *judgment by default*, the record shows that no *default* has yet been entered against the defendant and so the Court will treat the motion as one for the entry of default pursuant to Fed. R. Civ. P. 55 (a), which provides: "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." However,

> where a defendant appears and indicates a desire to contest an action, a court may exercise its discretion to refuse to enter default, in accordance with the policy of allowing cases to be tried on the merits. In the final analysis, default judgments are not favored in the law, and the entry of such a judgment is only appropriate where there has been a clear record of delay or contumacious conduct.

Wendt v. Pratt, 154 F.R.D. 229, 230 (D. Minn. 1994) (internal quotation marks and citations omitted) cited in 10A C. Wright, A. Miller & M. Kane, Federal Practice & Procedure § 2682 (3d ed. 2006)). Applying these same princi0ples to the facts at bar, the Court finds no justification for entry of default against the Defendant, especially where Plaintiff is in actual receipt of the answer, has suffered no obvious prejudice from the *de minimis* delay, and granting an entry of default would unfairly punish the City of

Lowell for the neglect of its attorney. Accordingly, Plaintiff's Motion for Judgment by Default (Doc. No. 8) is DENIED, and Defendant's late answer is hereby accepted by the Court.

The Court is somewhat more troubled by the obviously altered postmark on the envelope containing the copy of the answer served on Plaintiff, and Plaintiff's allegations that counsel for Defendant engaged in "trickeries and deceptions" to cover up its tardiness. Counsel's purported response to these allegations, that she "was not present when the mail was processed and has no knowledge or comprehension of the postage date," is clearly an inadequate justification. As provided by Rule 5.3 of the North Carolina Rules of Professional Conduct, "a lawyer having direct supervisory authority over the nonlawyer [assistant] shall make reasonable efforts to ensure that the non lawyer's conduct is compatible with the professional obligations of the lawyer."

It is now, therefore, ORDERED that counsel for Defendant shall, on or before 1 December 2006, SHOW CAUSE why sanctions should not be awarded to Plaintiff for expenses incurred in securing the expert services of a forensic document examiner, including reasonable travel expenses to Wake Forest, NC, as provided in 28 U.S.C. § 1821.

IT IS ORDERED.

Signed: November 7, 2006

/s/ Judge Frank D. Whitney
United States District Judge

APPENDIX NO. 4

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH
CAROLINA – CHARLOTTE DIVISION

Civil Action No: 3:05-CV-401
Date of entry: **11/16/2006 – Document No. 17**
Signed by: Judge Frank D. Whitney

Karagiannopoulos , Plaintiff vs. City of Lowell, Defendant	ORDER

THIS MATTER is before the Court sua sponte regarding the status of the case. Plaintiff has filed an interlocutory appeal of this Court's denying a motion for judgment by default (Doc. No. 15). The provision of the United States Code governing interlocutory appeals states:

When a district judge ... shall be of the opinion that [an interlocutory] order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: *Provided, however,* That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of

Appeals or a judge thereof shall so order. 28 U.S.C. § 1292(b).

Insofar as the pro se Plaintiff's "Notice of Appeal" is construed as a motion directed to this Court for certification of an interlocutory appeal, such motion is DENIED. Furthermore, pending disposition of the interlocutory appeal by the United States Court of Appeals for the Fourth Circuit, the Court exercises its discretion, as provided in 28 U.S.C. § 1292(b), not to stay progress of the case pending appeal.

Accordingly, defense counsel is not relieved of her allegation to comply with the Court's 7 November 2006 Show Cause Order. Furthermore, where it appears to the Court that the parties have failed to comply with Local Rule 16.1 regarding the setting of a case management plan, the parties are hereby ORDERED to confer pursuant to Fed. R. Civ. P. 26(f) and Local Rule 16.1 and jointly file a certification of initial attorney's conference and a proposed discovery plan on or before 11 December 2006.

IT IS ORDERED.

Signed: November 16, 2006

/s/ FRANK D. WHITNEY

United States District Judge

APPENDIX NO. 5

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 06-2214
3:05-cv-00401

Aura LaBró Karagiannopoulos, Plaintiff – Appellant
Versus
City of Lowell, Defendant – Appellee

Date of entry: December 19, 2006
Signed by: /s/ Patricia S. Connor, Clerk

O R D E R

Appellant has filed a motion to stay district court proceedings.

This Court denies the motion.

For the Court,
/s/ Patricia S. Connor
CLERK

APPENDIX. NO. 6

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 06-2214

Aura LaBró Karagiannopoulos, Plaintiff – Appellant

Versus

City of Lowell, Defendant – Appellee

Date of entry: June 14, 2007

Before: Traxler, King and Duncan, Circuit Judges

PER CURIAM:

Aura LaBro Karagiannopoulos seeks to appeal the district court's order denying her motion for a default judgment. This court may exercise jurisdiction only over final orders, 28 U. S. C. § 1291 (2000), and certain interlocutory and collateral orders, 28 U.S. C. §1292 (2000); Fed. R. Civ. P. 54 (b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). The order Karagiannopoulos seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. See Harvey Const. Co. v. Robertson-CECO Corp., 10 F. 3d 300, 304 (5th Cir. 1994). Accordingly, we dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

APPENDIX NO. 7

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA – CHARLOTTE DIVISION

Civil Action No: 3:05-CV-401

Date of entry: 08/27/2007 / date signed 08/24/2007

Signed by: Judge Frank D. Whitney **(Doc. No. 37).**

Karagiannopoulos , Plaintiff vs. City of Lowell, Defendant	ORDER

THIS MATTER is before the Court on Plaintiff's motion for reconsideration of the Court's prior Order denying Plaintiff's motion for judgment by default (Doc. No. 33). Plaintiff's motion raises no new arguments or facts that were not adequately presented in the original motion, and therefore her motion for reconsideration is DENIED.

For purpose of clarifying the record, however, the Court would like to restate its reasons for denying Plaintiff's motion for default and judgment by default. The Court did not deny Plaintiff's motion because it necessarily believed defense counsel's account of events.[1] Rather, the Court denied Plaintiff's motion because, even if Plaintiff's version of events were accepted as true (i.e., that defense counsel was late in serving the answer to the

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[1] Indeed, the Court ordered defense counsel to show cause why she should not be personally sanctioned for the alleged misconduct, and decided not to award any sanctions primarily because Plaintiff herself refused to accept any lesser sanction than a default judgment.

complaint and then tried to cover it up), it is this Court's considered opinion that it would be unjust to impose such a harsh penalty as judgment by default against the City (which undoubtedly has done nothing wrong here) on account of the negligence and/or misconduct of its attorney.

Neither the Defendant nor its attorney have gained an unfair advantage (or any "favor" with the Court) here. Indeed, from the point of view of the City, it is arguably Plaintiff who is attempting to gain an unfair advantage by seeking to obtain a favorable judgment based on a technicality rather than by proving the merits of her case at summary judgment and/or trial. Accordingly, the Court encourages all parties to let bygones be bygones and now to focus their energies on obtaining the discovery necessary to try this case on its merits.

IT IS ORDERED.

Signed: August 24, 2007
/s/ FRANK D. WHITNEY
United States District Judge

APPENDIX NO. 8

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH
CAROLINA – CHARLOTTE DIVISION

Civil Action No: 3:05-CV-00401-FDW

Date of entry: 05/08/2008– Document No. 79

Signed by: Judge Frank D. Whitney

Karagiannopoulos , Plaintiff vs. City of Lowell, Defendant	ORDER

THIS MATTER comes now before the Court upon Plaintiff's motion requesting that the Court "finally enter the Judgment by Default filed 11.21.05 for the relief demanded in the complaint." (Doc. No. 77). This motion for default judgment is but the latest incarnation of several attempts on the part of pro se Plaintiff to obtain an entry of default and default judgment against Defendant.

On November 21, 2005, Plaintiff moved for judgment by default, alleging that Defendant's Answer was untimely and that Defendant had falsified the postage date to make it appear as if its Answer were, in fact timely. **The Court, construing Plaintiff's motion as one for entry of default,** [1]

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1 Pro Se Plaintiff objected to this construction, calling it a "travesty of justice" (Doc. No. 14), but the Court notes that a default judgment, under Federal Rule of Civil Procedure 55, must be preceded by an entry of default. The Court was therefore following its duty to construe the motions of pro se plaintiffs charitably in order to prevent legal technicalities from hindering their claims.

Concluded that there was "no justification for entry of default against the Defendant, especially where Plaintiff is in actual receipt of the answer, has suffered no obvious prejudice from the *de minimis* delay, and granting an entry of default would unfairly punish the City of Lowell for the neglect of its attorney." (Doc. No. 14.) Plaintiff attempted to appear this decision to the United States Court of Appeals for the Fourth Circuit, but her appeal was denied because this Court's order was "neither a final order nor an appealable interlocutory or collateral order." Karagiannopoulos v. City of Lowell, No. 06-2214, 2007 WL 1725488, at *1 (4th Cir. June 14, 2007). Undeterred, Plaintiff then filed a motion for reconsideration in this Court, reiterating her belief that defense counsel had made "fraudulent, deceptive statements to the Court" and that the Court was allowing Defendant to benefit from its counsel's fraud by denying default judgment. (Doc. No. 33.) The Court again denied the motion and attempted to explain its ruling, stating:

> The Court did not deny Plaintiff's motion because it necessarily believed defense counsel's account of events. Rather, the Court denied Plain tiff's motion because even if Plaintiff's version of events were accepted as true (i.e., that defense counsel was late in serving the answer to the complaint and then tried to cover it up), it is this Court's considered opinion that it would be unjust to impose such a harsh penalty as judgment by default against the City (which undoubtedly has done nothing wrong here) on account of the negligence and/or misconduct of its

> attorney ... Neither the Defendant nor its attorney have gained an unfair advantage ... Indeed from the point of view of the City, it is arguably Plaintiff who is attempting to gain an unfair advantage by seeking to obtain a favorable judgment based on a technicality rather than by proving the merits of her case at summary judgment and/or trial.

(Doc. No. 37.) In other words, it was, and remains, the opinion of the Court that entry of default and default judgment are wholly inappropriate means to deal with a pleading that may or may not have been filed two days late.

Accordingly, Plaintiffs current motion for default judgment, which raises no new facts of issues, is hereby DENIED.

IT IS SO ORDERED.

Signed: May 8, 2008
/s/ FRANK D. WHITNEY
Frank D. Whitney
United States District Judge.

APPENDIX NO. 9

IN THE UNITED STATES DISTRICT COURT
FOR THE W..STERN DISTRICT OF NORTH
CAROLINA – CHARLOTTE DIVISION

Civil Action No: 3:05-CV-00401-FDW
Date of entry: 06/13/2008– Document No. 91
Signed by: Judge Frank D. Whitney

Karagiannopoulos , Plaintiff vs. City of Lowell, Defendant	**FINAL JUDGMENT**

THIS MATTER comes before the Court upon Defendant's Motion for Summary Judgment (Doc. No. 69). Plaintiff has responded to Defendant's Motion, Defendant has replied, and the Court has heard oral argument in this matter. Having considered the materials submitted by the parties, and having heard oral argument, the Court is now prepared to rule upon Defendant's Motion. First, however, the Court must rule on a lingering discovery issue. Defendant has submitted an affidavit created by its expert, Nadine Bennett, a certified planner with Centralina Council of Government. Plaintiff contends that this affidavit contains supplemental material that has not been timely disclosed, contrary to the Court's Pretrial Order (Doc. No. 30). The Court agrees with Plaintiff. The affidavit of Nadine Bennett (Doc. No. 71) is therefore STRICKEN from the record.

FACTUAL BACKGROUND

Plaintiff alleges in her Complaint that Defendant, the City of Lowell ("the City"), has discriminated against her in violation of the Equal Protection Clause of the Fourteenth Amendment. [1] Specifically, Plaintiff alleges that, because she is a Hispanic, [2] the City intentionally "de-escalated" the zoning of her property at 901-905 North Main Street, Lowell, North Carolina ("the Property") in order to prevent her from operating a used car lot on that property. The purpose of this used car lot was to fund the Labró Spanish and English School ("the School"), an organization operated by Plaintiff in order to teach computer competency, Spanish and English at no cost to students from low-income households. Plaintiff founded and began operating the School in June of 2001. (Compl. 2, Doc. No. 1; Colgate Aff. Ex. X, Doc. No. 74-8.) The City alleges that in 2003, prior to her purchase of the Property, Plaintiff inquired with Lowell City Manager Ben Blackburn about the zoning of the Property for the purpose of relocating the School to that site. (Blackburn Aff. 1, Doc. No. 72.) At oral argument Plaintiff disputed that this initial meeting ever took place, but her own submitted materials state that it did. In one of her exhibits, Plaintiff states, "In July 2003, Plaintiff went to see Mr. Blackburn...and told him that we would be buying the property in a few months." (Pl.'s Ex. 6 at 10, Doc. No. 85-4.) The City contends that during this meeting, Blackburn told

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1 The Complaint specifically says "42 U.S.C. § 1985 Note 232 – Equal protection and privileges." As shall be discussed, Plaintiff's Complaint is more properly brought under 42 U.S.C §1983,

2 Plaintiff is naturalized United States citizen born in Managua, Nicaragua.

Plaintiff that the Property was zoned C-2 – a classification reserved for small, neighborhood retail businesses and that a private school was appropriate for that classification, but that a used car lot was not discussed. (Blackburn Aff. 1, Doc. No. 72.) Plaintiff's exhibit is similar in that only the School and its licensing were formally discussed, but Plaintiff adds that she told Blackburn, at the conclusion of the meeting, that she would be back to apply for a license to sell used cars. (Pl.'s Ex. 6 at 10, Doc. No. 85-4.) On July 2, 2003, Plaintiff submitted an application for a privilege license to operate the School on the Property. (Answer Ex. E-1, Doc. No. 7-6.) The City granted Plaintiff's application and, according to Blackburn, all subsequent applications for the School have been annually renewed without incident. (Blackburn Aff. 5, Doc. No. 72.)

Having established the School on the Property, Plaintiff required funding in order to provide her services without cost. Plaintiff's plan was to sell used cars from the Property in order to defray the cost of operating the School and also to enable her to provide college scholarships to her students. However, when she informally inquired of Blackburn whether a used car lot would be appropriate for the Property, he responded that its C-2 classification precluded such a use. (Pl.'s Ex. 6, at 35, Doc. No. 85-4; Blackburn Aff. 1, Doc. No. 72.) Defendant's evidence demonstrates that the Property was marked as C-2 on the official City of Lowell zoning map from at least 1997 up until the present time. (Colgate Aff. Ex. R, Doc. No. 74-5.) Plaintiff, however, claims that she bought the Property solely because she believed it was zoned

C-3, basing her belief on previous owners' use of Property. [3]

On February, Plaintiff and her husband sent a letter to Blackburn requesting a zoning text amendment to sell used cars on the Property. In their letter, they stated that they were the new owners of the Property, which they recognized as "a commercial C-2 property," and asked that the City allow them to sell used cars on the Property based on its history of allowing used car dealerships there in the past. (Pl.'s Ex. 5 at 27, Doc. No. 85-3; Colgate Aff. Ex. G, Doc. No. 73-4.) On March 2, 2004, the City Planning Board met and expressed concern over the petition. Noting that "neighborhood businesses should be those that are primarily for the use of that specific

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[3] At oral argument, Plaintiff also claimed that she relied upon the opinion of Sam Mitchem, her neighbor and a member of the City Council, that she could sell used cars on the Property. This argument, one of apparent authority based on Mr. Mitchem's place on the City Council, runs contrary to the City's zoning ordinances and North Carolina law. One councilman, acting informally and without the ratification of the whole Council, does not have actual authority to bind the City. Rather, a zoning amendment must be considered by the Planning Board, have a public hearing before the City Council, and then have a final decision rendered by the City Council. (Blackburn Aff. At 1, Doc. No. 72.) Under North Carolina law, "parties dealing with the governmental organizations are charged with notice of all limitations upon the organizations' authority, as the scope of such authority is a matter of public record." Finger v. Gaston County, 631 S. E. 2d 171, 174 (N.C. App. 2006) (quoting Data General Corp. v. County of Durham, 545 S.E. 2d 243, 248 (N.C. App.2001). Thus, claims of apparent authority and estoppel may not be used against a governmental entity. See Data General, 545 S. E. 2d at 248; L & S Leasing, Inc. v. City of Winston Salem, 471 S. E. 2d 118, 120 (N.C. App. 1996).

and limited area," the Planning Board voted unanimously to recommend a denial of the petition to the City Council. (Colgate Aff. Ex. I at 1-2, Doc. No. 73-4.) On March 9, 2005, the City Council held a meeting in which Plaintiff informed the Council that she ran the School, that she and her husband had been remodeling it, and that the proposed zoning text amendment would allow her husband to sell cars to offset some of the costs of the School. (Colgate Aff. Ex. J at 4, Doc. No. 73-5,) Acknowledging the Planning Board's recommendation, the City Council voted to deny Plaintiff's petition for a zoning text amendment. (Colgate Aff. Ex. J. at 4, Doc. No. 73-5.) Plaintiff does not allege that any disparaging remarks about her ethnicity, either explicit or implicit, were made by anyone at either the Planning Board or City Council meetings, nor does the Court's independent review of the minutes of these meetings indicate that any such ethnic animus was expressed.

In July of 2004, shortly after the City Council denied Plaintiff's proposed zoning text amendment, Plaintiff's husband was granted a privilege license to sell cars at 4502 Wilkinson Boulevard ("the Wilkinson Boulevard property") under the business name "Used Cars For Less." (Colgate Aff. Ex. K at 4, Doc. No. 73-5.) Plaintiff describes this property as being "a poor location under lease." (Pl.'s Res. At 5, Doc. No. 87.) While operating his used car business from the Wilkinson Boulevard property, Plaintiff's husband stored cars on the Property. On August 18, 2004, Plaintiff's husband received a citation for storing "junk vehicles" on the Property. (Colgate Aff. Ex. K at 2, Doc . No. 73-5; Ex. L, Doc. No. 74-2.) Plaintiff's husband responded in a letter to the local

police that the vehicles were not junk vehicles, but were simply being stored on the Property in connection with his used car lot on the Wilkinson Boulevard property. (Colgate Aff. Ex. K at 1, Doc. No. 73-7.) Shortly thereafter, Blackburn sent a letter to Plaintiff's husband informing him that the cars were improperly kept on the Property and that the sale of used cars was not permitted in a C-2 zoning district. (Colgate Aff. Ex. L. at 1, Doc. No. 74-2.) On February 12, 2005, Plaintiff herself responded by stating that the cars were not being sold from the Property, but rather were being stored there for later sale at the Wilkinson Boulevard property. (Colgate Aff. Ex. M, Doc. No. 74-3.) Plaintiff went on to state that in granting a business license to the previous owner of the Property, Larry Morrow, who Plaintiff noted was a white man, the City had "established a new precedent and irrevocably amended that particular location's zoning ordinance from a C-2 to C-2 and C-3." (Colgate Aff. Ex. M, Doc. No. 74-3.) Plaintiff concluded by including a check and again requesting a personal business license in the name of "Used Cars For Less" with an address of 903 North Main Street, stating that she is "a Hispanic and a minority" and that she would file a discrimination lawsuit "in the event that you discriminate against me and refuse to issue me said license." (Colgate Aff. Ex. M, Doc. No. 74-3.) On March 24, 2005, Blackburn responded to Plaintiff by returning her check and reiterating that the Property was zoned C-2 and that automobile sales were not permitted use within a C-2 zone. (Colgate Aff. Ex. N, Doc. No.74-3.) Plaintiff responded on April 9, 2005, with another letter, outlining her belief that businesses had been

operating in a manner consistent with a C-3 zoning district for years under white male ownership and threatening a $200,000 lawsuit, once again stating, "refusal to issue me a license is discriminatory and an unlawful act" and reminding the City that she is "a Hispanic and a minority." (Colgate Aff. Ex. O, Doc. No. 74-4.) Not having obtained the zoning license she desired, Plaintiff filed her Complaint with this Court on September 19, 2005.

It is undisputed by the City that the Property Was used for automobile sales from 1962 to 1990. Larry Gene Morrow purchased the Property in 1959, and according to Morrow it was "commercially zoned" and at that time "permitted the sale of automobiles." He operated a used car business under the name of "Gene Morrow Auto Sales" on the Property from 1962 to 1980. (Compl. Ex. 2 at 2.) In 1980, Carl Mitchem leased the Property and operated a used car business for approximately four to five years. From 1978 to 1984, a pool hall named "Woodlawn Snack Bar & Game Room" was also located on the Property. Neither the City nor Plaintiff offer any evidence of the specific zoning for the Property for these early years, but Plaintiff alleges that all of the preceding businesses received annual business licenses from the City. In 1985, Morrow sold the Property to Mark Gosnell, who on July 8, 1985, successfully petitioned the City to change the zoning of the Property from R-8 multifamily residential to C-2 neighborhood business.[4] (Colgate Aff. Ex. B, Doc. No. 73-2.)

4 At oral argument, Plaintiff disputed whether Mr. Gosnell's application for re-zoning related to her property. She stated that, according to her reading of the City's Exhibit A, the property was re-zoned was in reality 39 Lineberger Street. (See Summ. J. Hr'g Tr. At 23, June 9, 2008.) A careful look at Mr.

Gosnell's application, however, reveals that 39 Lineberger Street is the "Address of the Application," or in other words, Mr. Gosnell's personal residence. On the other hand, "the property to be re-zoned" refers to the specific lot numbers, which correspond on the accompanying map to the Property currently owned by Plaintiff and her husband. Plaintiff's contention that this information has been fabricated by the City is addressed below.

According to Gosnell's application, the reason for the re-zoning was his desire to conform the zoning of the property to its "present use" as a neighborhood business. (Colgate Aff. Ex. A, Doc. No. 73-1.) Gosnell operated a car lot on the Property until around 1990, although it is unclear whether the business was properly allowed as a "nonconforming use" in the newly-zoned C-2 District or if the City simply did not enforce the zoning. From 1990 to 1991, Jim-Lyn's Laundry operated on the Property. From 1991 through 2001, Jack Sexton owned the property and operated a pottery manufacture and wholesale business under the name "JS Potter." According to Plaintiff's evidence, wholesale businesses are only permitted in a C-3 District. However, in a letter dated April 30, 1991, from the City's Assistant Zoning Officer directed to "Whom It May Concern," pottery manufacturing and sales were deemed to be permitted in the C-2 Zoning District. (Colgate Aff. C, Doc. No. 73-2.) Beginning sometime in or around 1998, Sexton leased part of the Property to Scott Johnson, who operated a welding shop in the Property's open field. While the applications for privilege licenses submitted by Sexton do not explicitly list welding as an activity to be conducted by his business, they do list the construction of "gates and

fences" as an included activity and "Classic Iron Works" as an associated business. (Compl. Exs. 9, 10, Doc. No. 1-3.) The City has no record of an application for a privilege license by Johnson, who purchased the Property on March 7, 2001. However, his welding activities and equipment were visible from Main Street and a sign reading "Classic Iron Works" was displayed on the Property, which is only 1/10 of a mile from Lowell City Hall. Johnson purchased the Property on March 7, 2001, and continued his welding operations through January of 2004. He sold the Property to Plaintiff and her husband on October 15, 2003. Plaintiff and her husband allowed Johnson to remain on the Property until January of 2004.

Plaintiff has submitted an affidavit from Larry Simonds, former City Councilman from 1979-85 and former mayor during the terms of 1991-93 and 1997-2001. In his affidavit, Simonds states that "the only reason that the City of Lowell has denied [Plaintiff] a C-3 Business License to sell used cars on her C-3 property is because she is a Hispanic; there is no other valid reason." (Compl. Ex. 1 at 6-7, Doc. No. 1-2.) Simonds also states that the City has been granting C-3 business licenses for that location for several decades. (Compl. Ex. 1, at 7, Doc. No. 1-2.) However, in his deposition, Simonds, who unsuccessfully ran for mayor in 2001, 2003, and 2005, admits to not having attended a City Council meeting, Planning Board meeting, or zoning meeting since 2001. (Simonds' Dep. 14-15, Doc. No. 70-3.) He also admits to a lack of knowledge of the current process for issuing zoning permits and amendments, and a lack of knowledge about the specific zoning for the

Property. (Simonds' Dep. 48, 30-31, Doc. No. 70-3.) Nevertheless, Simonds asserts that he is able to give evidence on "[t]he City of Lowell's procedure in the issuance of its Business Licenses." (Comp., Doc. No. 1, Ex. 1 at ¶ 1A.) Finally, during his deposition, Simonds stated that "some of the council members don't want them to have a used car business there." When pressed as to what he meant by "them," Simonds clarified that he was referring to a "[a]ny particular person. This doesn't necessarily mean these folks." (Simonds' Dep. 51-52, Doc. No. 70-3.)

Both Simonds' deposition and Blackburn's affidavit reference the denial of a privilege license for a used car lot to Dr. Charles Lowry, a white male doctor who has lived in the area for the past four decades. (Simonds' Dep. 37-38, Doc. No. 70-3; Blackburn Aff. 4-5, Doc. No. 72.) Dr. Lowry wanted to sell automobiles on his property, which is zoned C-1-another district in which automobile sales are not allowed. Around September 2005, Lowry inquired with Blackburn about whether a used car lot would be permissible on his property, and was told that used car sales are not allowed on a C-1 property. (Blackburn Aff. 4-5, Doc. No. 72.) Blackburn then informed Lowry about the procedure for applying for a zoning text amendment. Lowry applied for a zoning text amendment to sell automobiles on his property, but the City Council denied his application. (Blackburn Aff. 5, Doc. No. 72).

LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, the discovery and disclosure materials on

file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). It is well established that summary judgment should be granted "only when it is clear that there is no dispute concerning either the facts of the controversy or the inferences to be drawn from those facts." Pulliam Inv. Co. v. Cameo Properties, 810 F. 2d 1282, 1286 (4th Cir. 1987). The party moving for summary judgment has the burden of showing the absence of a genuine issue of material fact, and the Court must view the evidence before it and the inferences to be drawn therefrom in the light most favorable to the nonmoving party. United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). When the defendants the moving party and the plaintiff has the ultimate burden of proof on an issue, the defendant must identify the parts of the record that demonstrate the plaintiff lacks sufficient evidence. The nonmoving party, Plaintiff in this case, must then go beyond the pleadings and designate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); see also Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). Plaintiff "cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another." Beale v. Hardy, 769 F.2d 213, 214 (4th Cir. 1985). "Mere unsupported speculation... is not enough to defeat a summary judgment motion." Ennis v. National Ass'n of Bus. & Educ. Radio, Inc., 53 F. 3d 55, 62 (4th Cir. 1995).

ANALYSIS

Plaintiff's Complaint and subsequent filings suffer from one, overriding non sequitur, albeit as under-

standable one. Plaintiff's evidence shows that the Property, from 1962 to 2004, has been consistently used in a manner inconsistent with a C-2 zoning designation, but consistent with a C-3 designation. The City does not contest these facts, but rather has supplemented them with its own records. Based upon these prior use of the Property, Plaintiff has drawn a conclusion that has some surface, common sense appeal: that the Property must be zoned C-3.[5] This conclusion, however, does not follow, and is, in fact, legally incorrect. Property designations that have been properly established by city ordinance do not change simply because previous owners have not complied with them. Nor can Plaintiff argue that the City is now estopped from enforcing its zoning regulations because it has not enforced them in the past. As the North Carolina Supreme Court has stated:

> In enacting and enforcing zoning regulations, a municipality acts as a governmental agency and exercises the police power of the State. The police power is that inherent and plenary power in the state which enables it to govern, and to prohibit things hurtful to the health, morals, safety, and welfare of society. In the very

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[5] For example, at one point during oral argument, the Court asked Plaintiff how she thought the Property had become C-3, to which she responded, "Because before that since 1962 they had been operating C-3 businesses... I just go by what had been done before. All of the businesses that had been done before." (Summ. J. Hr'g Tr. At 18-19.) The Court pressed further on this point, stating, "So you admit that you have no evidence of it legally being zoned a C-3. You only have evidence of the fact it was used," to which Plaintiff responded, "Yes." (Id. At 19.)

> nature of things, the police power of the State can not be bartered away by contract, or lost by any other mode. This being true, a municipality can not be stopped to enforce a zoning ordinance against a violator by the conduct of its officials in encouraging or permitting such violator to violate such ordinance in time past...[T]he law must be so written; for a contrary decision would require an acceptance of the paradoxical proposition that a citizen can acquire immunity to the law of his country by habitually violating such law with the consent of unfaithful public officials charged with the duty of enforcing it.

City of Raleigh v. Fisher, 232 N.C. 629, 635 (1950). Thus, Plaintiff cannot argue that the Property has somehow become C-3 because of its previous use when the tangible evidence demonstrates that it is C-2. The City is well within its right, under North Carolina law and its own ordinances, to enforce its facially neutral and otherwise valid zoning ordinances. The Court understands the obvious frustration that Plaintiff must have felt upon being denied something that the City, either explicitly or tacitly, had granted previous owners. If Plaintiff had not been such a good citizen and played by the rules, bringing to the City's attention her desire to put a used car lot on the Property as required by city ordinance, the City might not have been the wiser. There is, however, no remedy for Plaintiff's frustration under North Carolina law. Plaintiff's claim, if it is to survive at all, cannot be that the City has somehow "de-escalated" the Property, a conclusion that simply does not follow from the facts

presented, but rather that the City enforced its zoning ordinance in a way that violated Plaintiff's constitutional rights.

Although Plaintiff's Complaint purports to be based upon 42 U.S.C. § 1985, that section is inapplicable to the facts as Plaintiff has presented them. In order to establish a cause of action for "conspiracy to deny equal protection of the laws" under § 1985 (3), Plaintiff must first prove "a conspiracy of two or more persons." Simmons v. Poe, 47 F. 3d 1370, 1376 (4th Cir. 1995). As an initial matter, it appears that the intracorporate conspiracy doctrine prohibits Plaintiff's § 1985 claim as it has been alleged.[6] A conspiracy is an agreement between two or more persons, the object of which, in the case of § 1985(3), is to deprive the plaintiff of the equal enjoyment of rights secured by the law to all. Just as a corporation cannot conspire with itself, the City, a single "person" under § 1985,[7] is similarly incapable of conspiring with itself.[8]

[6] Buschi v. Kirven, 775 F. 2d 1240, 1251 (4th Cir. 1985) ("It is basic in the law of conspiracy that you must have two persons or entities to have a conspiracy. A corporation cannot conspire with itself any more than a private individual can, and it is the general rule that the acts of the agent are the acts of the corporation.")

[7] See Monell v. Department of Social Services of City of New York, 436 U.S. 658, 690-91 (1978) (holding that Congress, in enacting the Civil Rights Act of 1871, intended to include municipalities and other local government units in its definition of "persons").

[8] Rini v. Zwirn, 886 F. Supp. 270, 292 (E.D.N.Y. 1995) ("Intracorporate immunity has also been extended to the context of conspiracies between a public entity and its employees."); see also Zombro v. Baltimore City Police Dept., 868 F. 2d 1364, 1371 (4th Cir. 1989) (observing that the Baltimore City Police

Department, even if it were a person, "may not conspire with itself"); Savage v. North Carolina Dept. of Correction, No. 5:06-cv-171, 2007 WL 2904182, at *16 (E.D.N.C. Sept. 29, 2009) (observing that the North Carolina Department of Correction, even if it were a person, could not "conspire with itself"); Orafan v. Goord, 411 F. Supp. 2d 153, 165-66 (N.D.N.Y. 2006), rev'd on other grounds sub nom. Orafan v. Rashid, No. 06-2951, 2007 WL 2875968 (2d Cir. Sept. 28, 2007) (holding that employees of the New York State Department of Correctional Services were incapable of conspiring together as a matter of law); Cameron v. Church, 253 F. Supp. 2d 611, 623 (S.D.N.Y. 2003) (holding that employees of Westchester County, New York, were "legally incapable of conspiring together").

Putting the intracorporate conspiracy doctrine aside, Plaintiff has provided no evidence concerning a "meeting of the minds" to participate in a "joint plan of action" or to concoct a "single plan, the essential nature and general scope of which [was] known to each person who is to be held responsible for its consequences." Simmons, 47 F.3d at 1377-78 (quoting Lenard v. Argento, 699 F. 2d 874, 882-83 (7th Cir. 1983) abrogated on other grounds by Hensley v. Eckerhart, 461 U.S. 424, 436 n.11 (1983)). Plaintiff has not offered any evidence demonstrating this kind of a mutual understanding between two or more persons that would satisfy this "relatively stringent standard." Id. At 1377. Thus, the Court shall proceed to discuss 42 U.S.C. §1983, which more appropriately addresses Plaintiff's Complaint.[9] Section 1983 provides:

[9] The Court notes its duty to hold pro se plaintiffs to less stringent standards of pleading than represented parties. See Haines v. Kerner, 404, U.S. 519, 520 (1972); Beaudett v. City of Hampton, 775 F. .2d 1274, 1278 (4th Cir. 1985) holding that a pro se plaintiff's difficulty articulating his grievance "need not

detour the district court from resolving that which the litigant himself has shown to be his real concern").

> "Every person who, under color of law of any statute, ordinance, regulating, custom, or usage ...subjects, or causes to be subjected any citizen of the United States ...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured...

42 U.S.C. § 1983. Because § 1983 imposes liability for violation of rights "secured by the Constitution," the first inquiry is "whether the plaintiff has been deprived of a right "secured by the Constitution and laws." Baker v. McCollan, 443 U.S. 137, 140 (1979). The Supreme Court has held that the equal protection of the laws under the Fourteenth Amendment is such a right. McNeese v. Board of Ed. For Community Unit School Dist. 187, 373 U.S. 668, 674 (1963). Plaintiff, however, has not articulated a specific legal theory of how her equal protection rights have been violated; she simply maintains that the City, in denying her a zoning text amendment and a privilege license to sell used cars, has violated her right to the equal protection of the laws. Thus, it being necessary to devise the legal theory behind Plaintiff's factual allegations, the Court will proceed under the framework that best fits the nature of those allegations: selective enforcement. [10]

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[10] Although clams of disparate impact may be more common in equal protection jurisprudence, that theory is inapplicable to the present situation. Plaintiff has not presented any evidence

concerning other Hispanic individuals, or individuals of any other protected class, and thus has not shown that a facially neutral statute has had a disproportionately adverse impact on Hispanics or some other suspect class. Similarly, Plaintiff has failed to show any "governmental "custom" that has become so "persistent and widespread" that it now constitutes "permanent and well settled city policy." Monell v. Department of Social Services of City of New York, 436 U.S. 658, 691 & n.56 (1978). Her allegations only involve the City's decisions as they relate to her, her ownership and use of the Property, and previous owners' use of the Property. Thus, her theory must be one of selective enforcement.

Although, selective enforcement has been called a "murky corner of equal protection law," LeClair v. Saunders, 627 F.2d 606, 608 (2d Cir. 1980), the United States Court of Appeals for the Fourth Circuit appears to have adopted the LeClair standard. See Jetstream Aero Services, Inc. v. New Hanover County, No. 88-1748, 1989 WL 100644, at *1 (4th Cir. Aug. 15, 1989). That standard contains two elements: "First, plaintiff must establish that defendant[] treated [her] differently in applying the laws than it treated other similarly situated entities. Second, plaintiff must prove that defendant[] intentionally or purposefully discriminated against [her] in selectively enforcing the laws." Houck & Sons, Inc. v. Transylvania County, 852 F. Supp. 442, 452 (W.D.N.C. 1993); see also LeClair, 627 F. 2d at 609-610; Jetstream Aero Services, 1989 WL 100644, at *1. Because most courts addressing selective enforcement have focused on the second element, see Houck & Sons, 852 F. Supp. At 452, the Court will address that element first.

In order to satisfy LeClair's intent element, Plaintiff must show that the City acted with an

intentional, discriminatory purpose. As the United States Supreme Court has stated:

> "Discriminatory purpose," ...implies more than intent as volition or intent as awareness of consequences. It implies that the decision maker, in this case a [City Council], selected or reaffirmed a particular course of action at least in part 'because of," not merely "in spite of," its adverse effects upon an indentifiable group.

Personnel Adm'r of Mass. V. Feeney, 442, U.S. 256, 279 (U.S. 1979). Purposeful discrimination can be shown by circumstantial evidence, but such evidence must present a "stark" pattern of adverse impact on a particular group." E & T Realty v. Strickland, 830 F .2d 1107, 1114 n.9 (11th Cir. 1987) (citing Village of Arlington Heights v. Metro. Housing Dev. Corp., 429 U.S. 252, 266 (1977)). "Even arbitrary administration of a statute, without purposeful discrimination, does not violate the equal protection clause." Id. At 1114. In order to satisfy this element, Plaintiff must present either direct evidence that the City purposefully denied her application for a zoning text amendment because she is Hispanic, or circumstantial evidence demonstrating a stark pattern of discrimination against Hispanics.

As direct evidence of purposeful discrimination, Plaintiff has produced the affidavit of Larry Simons, former City Councilman and Mayor, who state, "the only reason that the City of Lowell has denied [Plaintiff] a C-3 Business License to sell used cars on her C-3 property is because she is a Hispanic; there is no other reason." (Comp. Ex 1 at 6-7, Doc. No. 1-2.) Mr. Simonds, however, provides no

factual basis for this conclusory allegation. His service to the City ended in 2001, well before Plaintiff purchased the Property in 2003 and before the City Council denied her application for a zoning text amendment in 2004. Mr. Simonds has provided no evidence that he had any particular insight into the way Plaintiff's request for a zoning text amendment was handled by the Planning Board or the City Council. Furthermore, Mr. Simonds stated in his deposition that the City Council didn't single out Plaintiff and her husband based on any suspect classification, but rather didn't want "[a]ny particular person" at all to operate a used car business on the Property. (Simonds Dep. 51-52, Doc. No. 70-3.) Far from showing purposeful discrimination against Plaintiff based on her national origin, this statement demonstrates the City's current, reasonable decision to not allow anyone to operate a used car dealership on the Property. Mr. Simonds' statement, consisting of a legal conclusion without any factual support whatever, is insufficient evidence that the City 3purposefully discriminated against Plaintiff due to her national origin.[11]

Plaintiff's only other evidence of purposeful discrimination is the fact that the City failed to enforce the Property's zoning designation for the past forty-two years, but has chosen to do so now that she owns the Property. From this fact, Plaintiff draws the inference that the City is discriminating against

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[11] Cf. Cupples v. Amsan, LLC. No. 07-1403, slip op. at 7, 9 (4th Cir. June 10, 2008) (observing that the statement of a former vice president of defendant's human resources department was "virtually irrelevant" because, as a former corporate official, he was not privy to all the relevant facts).

her because she is Hispanic. However, Plaintiff draws this inference without any additional substantiation. When pressed by the Court at oral arguments as to what support she has for this inference, Plaintiff responded, "To me I think it's only common sense...if I have seen from 1962 to January 2004 they have had C-3 businesses and they are all Caucasian men. Now I show up and they say it's a mistake." (Summ. J. Hr'g Tr. At 38-39.) Although it may seem like common sense to Plaintiff, the conclusion she draws must have a basis in fact if she is to survive summary judgment. In other words, Plaintiff, "must do more than simply show that there is some metaphysical doubt" concerning the Property, its previous use, and the City's current desire to enforce its zoning regulations. Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp., 475 U.S. 574, 587 (1986). As a single piece of circumstantial evidence, the City's history of enforcing its zoning ordinances fails to demonstrate a pattern of discrimination, let alone the "stark pattern" required by Supreme Court case law. See Village of Arlington Heights, 429 U.S. at 266. Simply put, no reasonable jury, having head Plaintiff's evidence, could come to the conclusion that the City purposefully and intentionally discriminated against Plaintiff based on her national origin.

Because Plaintiff has not shown purposeful discrimination, the Court need not exhaustively address LeClair's similarly situated element. However, it appears that Plaintiff has also failed to satisfy this element. The City has presented uncontroverted evidence that Dr. Charles Lowry, a white male doctor, has also been denied a zoning text amendment to sell used cars on his property.

(Blackburn Aff. 5, Doc. No. 72.) Viewing all the evidence presented by Plaintiff and the City, Plaintiff and Dr. Lowry are the only individuals who have recently petitioned the City for a zoning text amendment to sell used cars on property not zoned for such use. The City has denied amendments to both Plaintiff and Dr. Lowry. [12] Thus, the only evidence of another, similarly situated individual demonstrates that the City is applying its zoning laws equally.

Plaintiff further rejects this conclusion by arguing that she has "observed several Caucasian residents in Lowell" (Pl's Resp. at 19, Doc. No. 87) who have received zoning text amendments. This bald-faced assertion, however, is insufficient to show that the City has treated similarly situated individuals differently. Were the individuals petitioning to sell used cars? What was the zoning designation of their properties? Plaintiff has not provided any additional facts or supporting documentation regarding these Caucasian residents and their zoning text amendments.

Furthermore, it became apparent at oral argument that Plaintiff has been relying upon tax maps and records in making her determination that the City allows Caucasians to violate zoning

[12] In her Response and at oral argument, Plaintiff contended that the denial of a license to Dr. Lowry was "not an analogous comparis9on" because his property was C-1, rather than C-2. (Pl.'s Res. At 19, Doc. No. 87; see also Summ. J. Hr'g Tr. At 46.) Plain-tiff's distinction is meaningless since it is not the specific zoning of a property that is important but rather the single issue of whether or not the zoning authorized the sale of used cars. In both Plaintiff's and Dr. Lowry's case, the zoning did not allow the sale of used cars, and both were treated equally by the City.

ordinances. (Summ. J. Hr'g Tr. At 64; see also Pl's Ex. 22 (a map from the Gaston County office of the Director of Revenue) Doc. No. 85-7.) For example, Plaintiff repeatedly referred to a zoning designation of "single residential." (Summ. J. Hr'g Tr. At 51.) There is no such designation, but it appears that Plaintiff was referring to the tax status of certain properties. Thus, Plaintiff was referencing that had been taxed as single family residences but were subsequently used as something else. This fact, even when assumed to be true, does not shed light on the actual zoning of those properties. The highest zoning designation in the City is R-6. A property on a R-6 lot may be changed from a single family residence to a duplex (see Summ. J. Hr'g Tr. At 48-49) without any effect whatsoever on the property's zoning. In any event, it is clear that Plaintiff has failed to show different treatment of similarly situated ndividuals.[13]

Finally, the Court rejects Plaintiff's outlandish claims that the City and/or defense counsel fraudulently altered certain maps and zoning documents in an effort to deny Plaintiff and her husband a used car lot. Plaintiff has presented

[13] Plaintiff seems to argue that although she is not similarly situation to any contemporaneous individuals, she is similarly situated to the previous owners of the Property (Pl.'s Resp. at 18, Doc. No. 87.) How-ever, Plaintiff has presented no authority for the proposition that LeClair's similarly situated element can be satisfied by individuals who are note contemporaneous with the plaintiff, but are similarly situated in that they previously owned the same piece of property. Although "[t]here is no precise formula to determine whether an individual is similarly situated," Maulding Development, LLC v. City of Spring-field, III., 453 F.3d 967, 970 (7th Cir. 2006), the Court is disinclined to create new law in this area given its dispositive conclusion on purposeful discrimination.

no expert, scientific evidence in support of her theories. Rather, she has referenced her Associate of Arts Degree in Interior Design, stating that this degree makes her an "expert draftsman." (Pl.'s Resp. at 8, Doc. No. 87.) An undergraduate degree in interior design, however, does not qualify Plaintiff as an expert in the drafting of metes and bounds, zoning maps and documents, or any of the allegedly fraudulent documents. In other words, Plaintiff has failed to present competent, expert testimony to support her serious and otherwise incredible claims, and the Court will not countenance them as such.

CONCLUSION

Plaintiff's claim that her property has achieved C-3 zoning based on prior use is legally incorrect. Every tangible piece of evidence before the Court supports the fact that the Property is, and during the relevant time period has been, zoned C-2, and that a used car lot is an impermissible use in such a zone. The fact that the City did not enforce this zoning designation in the past does not estop it from current enforcement. The Court understands Plaintiff's frustration, and is sympathetic to her position, but the law simply does not support her claim that the City re-zoned her property. Furthermore, Plaintiff has been unable to show that the City's current enforcement is based on her ethnicity as an individual of Hispanic decent. Specifically, she has presented insufficient evidence to show that the City selectively enforced her property's C-2 zoning designation with an intentional, discriminatory purpose.

Accordingly, the Court holds that there are no genuine issues as to any material fact and that Defendant is entitled to summary judgment as a matter of law. Defendant's Motion is therefore GRANTED.

IT IS SO ORDERED.

Signed June 13, 2008

FRANK D. WHITNEY
United States District Judge

APPENDIX NO. 10

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 08-1682

Aura LaBró Karagiannopoulos, Plaintiff – Appellant
Versus
City of Lowell, Defendant – Appellee
Date of entry: December 12, 2008
Before: Traxler, King and Duncan, Circuit Judges

PER CURIAM:

Aura LaBro Karagiannopoulos appeals a district court order and judgment granting summary judgment to the City of Lowell, North Carolina, and dismissing her civil rights complaint. We note Karagiannopoulos in her informal brief failed to challenge the district court's findings with respect to the order granting summary judgment except for two meritless challenges to the court's decision to admit and review two items of evidence. As a result, she has waived any review by this court of the merits of her complaint and the district court's findings leading to the dismissal of her complaint. See 4th Cir. R. 34(b); Edwards v. City of Goldsboro, 178 F. 39 231, 241 N.6 (4th Cir. 1999). We find Karagiannopoulos' various challenges to the court's order denying the motion for default judgment to be entirely without merit and, insofar as she claims there was a conspiracy between the district court and the City of

Lowell, such claim is delusional. We find the court did not abuse its discretion by denying the motion for default judgment. Mitchell v. Brown & Williamson Tobacco Corp., 294 F.3d 1309, 1316 (11th Cir. 2002); White v. Gregory, 1 F. 3d 267, 270 (4th Cir. 1993). The clear policy of the federal rules is to encourage whenever possible the disposition of claims on the merits. Reizakis v. Loy, 490 F.2d 1132, 1135 (4th Cir. 1974). "[I]n situations where a party is not responsible for the fault of his attorney, dismissal may be invoked only in extreme circumstances." Id.

Accordingly, we affirm the district court's order and judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

APPENDIX NO. 11

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

STAY OF MANDATE UNDER
FED. R. APP. P. 41 (d) (1)

Filed: December 23, 2008
No. 08-1682,
Aura Karagiannopoulos v. City of Lowell
3:05-cv-00401-FDW-DCK

Notice is provided to the Clerk of the District Court that;

[XX] This Court's mandate has been stayed pending disposition of a petition for panel and/or en banc rehearing.
[ ] This Court's mandate has been stayed pending disposition of a motion to stay the mandate.
[ ] This Court's mandate has been recalled for the limited purpose of considering a timely petition for panel and or en banc rehearing.

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX NO. 12

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

STAY OF MANDATE UNDER
FED. R. APP. P. 41 (d) (1)

Filed: January 23, 2009

No. 08-1682
(3:05-cv-00401-FDW-DCK)

AURA LABRO KARAGIANNOPOULOS,
Plaintiff - Appellant v.
CITY OF LOWELL,
Defendant – Appellee

O R D E R

The Court denies the petition for rehearing.

Entered at the direction of the panel: Judge Traxler, Judge King and Judge Duncan.

For the Court
/s/ Patricia S. Connor, Clerk